IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

Crl.Rev.Pet.No. 719 of 1998()

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CRA.334/1996 of ADDL. SESSIONS COURT, THRISSUR
CC.101/1995 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR

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REVN. PETITIONER: APPELLANT/ACCUSED

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1. BABY, S/O. LATE GEORGE
   MANNATHIKUZHI HOUSE
   PEECHI VILLAGE, VATTAPARA
   VALAKAVU.

2. MATHEW, S/O.LATE GEORGE
   MANNATHIKUZHI HOUSE
   PEECHI VILLAGE, VATTAPARA
   VALAKAVU.

BY ADV. SRI.P.VIJAYA BHANU
SRI.T.G.MANOJ

RESPONDENTS: RESPONDENT/COMPLAINANT

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STATE OF KERALA, REPRESENED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING THE S.I. OF POLICE, MANNUTHY.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP719/1998

ORDER ON CRL.M.P.NO.3689/1998 IN CRL.R.P.NO.719/1998

DISMISSED

5.3.2007 Sd/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

**K.R.UDAYABHANU, J**

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CRL.R.P.No.719 of 1998

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Dated this the 5th day of March, 2007

**ORDER**

Revision petitioners stand convicted for the offence under Sections 324, 326 read with 34 IPC and sentenced, as modified by the appellate court, to undergo simple imprisonment for six months each and to pay a fine of Rs.1,500/- each under Section 326 IPC and in default, to undergo simple imprisonment for one month each. They are also sentenced to undergo simple imprisonment for three months each for the offence under Section 324 IPC. It was also directed that out of the fine amount, if realised, Rs.2,000/- will be paid to PW2 the victim.

2. The prosecution case is that on 16.4.1995, at about 5.30 p.m., PW2 was waiting in the bus stop. The accused approached him and dragged him to a certain distance and A1 hit on his head with a granite stone sheathed in a cloth and A2 repeatedly beat on his head with a stick. The stick is produced as MO1 and the stone and the cloth with which the stone was covered is produced as MO2. As a result of the attack, PW2

sustained depressed fracture on the left side of the paretal bone and contusions on different parts of the body. The evidence of prosecution consisted of the testimony of PW's 1 to 9, Exts. P1 to P6 and material objects i.e, MO1 and MO2 series. PWs 1 and 2 are the eye witnesses to the entire incident and PW3 is the doctor, who issued Ext. P3 wound certificate wherein it is mentioned that on C.T. scan, extra dural haemerage was detected inside the left parietal region. PW2, the injured has immediately taken to the hospital. The wound certificate was recorded at 6.30 P.M. The only major contention raised is that CW3 another occurrence witness, who took the injured to the hospital, was not examined. The courts below have considered the above contention and discarded the same in view of the evidence of PW's 1 and 2 that appeared trustworthy and credible. It was also pointed out that there is no motive alleged. PW2 injured has stated that the accused abused, after getting fully drunk, from in front of the house of PW2 and that PW2 have questioned the same. The evidence of PW2 is to the effect that he has been rendered invalid on account of the consequences of

the injury sustained. It is also to be noted that no omissions or contradictions in the evidence of PWs 1 and 2 were brought out with respect to the previous statement through the evidence of PW9, the investigating officer. It was further pointed out that there is nothing overt act by A2 in relation to the offence under Section 326 IPC is alleged. It is pointed out that although it charged that PW2 was beaten with a stick, there is no corresponding injury. I find that in Ext. P2 wound certificate contusion on the body is noted. Although common intention is alleged taking into consideration, the details of the incident as alleged, I find that A2 is liable to be acquitted with respect to the offence under Section 326 IPC. All the same the finding that he is guilty for the offence under Section 324 is not liable to be set aside. In the circumstances, the conviction with respect to A1 is limited to the offence under Section 326 IPC and A2 with respect to the offence under Section 324 IPC. No other overt act except hitting with the stone is alleged against A1.

3. The counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place about 13

years back and so far as the revision petitioners were living under the shadow of impending imprisonment.

4. In the circumstances, sentence is modified with respect to A1 to undergo simple imprisonment for four months and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for three months. The sentence on A2 is reduced to a fine of Rs.5,000/- and in default to undergo simple imprisonment for three months. The fine amount, if realised, will be paid to PW2.

The Criminal Revision Petition is disposed of as above.

**K.R.UDAYABHANU,**
**JUDGE**

csl

**K.R.UDAYABHANU, J**

Crl.R.P.No.929 of 1997

**ORDER**

26th February, 2007